IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

O.P.No.21261 of 1999(S)

R.A.NO.197/COCH/98 ARISING OUT OF I.T.(S&S) A.NO.12/COCH/97 BEFORE THE INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH.

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PETITIONER:-

M/S.DON BOSCO INDUSTRIES,
MUNDAKKAL, KOLLAM,
REPRESENTED BY ITS MANAGING PARTNER
SHRI.ALPHONSE JOSEPH.

BY ADV. SRI.C.KOCHUNNY NAIR
SRI.DALE P.KURIEN

RESPONDENT:-

THE COMMISSIONER OF INCOME-TAX,
THIRUVANANTHAPURAM.

BY STANDING COUNSEL FOR GOVERNMENT OF INDIA (TAXES)
SRI.P.K.RAVINDANATHA MENON (SR.)
SRI.GEORGE K.GEORGE.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 30/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu,C.J. & K.T.Sankaran,J.

O.P.No.21261 of 1999-S

Dated, this the 30th day of July, 2007

JUDGMENT

H.L.Dattu,C.J.

Sri.George K.George, learned Standing Counsel for Government of India (Taxes) is directed to take notice for the respondent and he is permitted to file his memo of appearance in two seeks time.

(2) The assessee has filed this petition under Section 256(2) of the Income Tax Act ("Act" for short) inter alia requesting this Court to direct the Income Tax Appellate Tribunal, Cochin Bench, Cochin to state the case and refer the following question for consideration and decision of this Court:

> "Whether the Assistant Commissioner of Income-tax, Investigation Circle, to whom the file was transferred under section 127 of the Income-tax Act, 1961 by the Commissioner of Income-tax, Thiruvananthapuram, is the *"authority"* to make block assessment?"

(3) The assessee being aggrieved by the orders passed by the Assistant Commissioner of Income Tax, Investigation Circle, Kollam had preferred an appeal before the Income Tax Appellate Tribunal in I.T.(SS) A.No.12(Coch)/1997 for the block period 1.4.1985 to 4.1.1996. The Tribunal has rejected the appeal.

(4) Thereafter the assessee has filed an application under Section 256(1) of the Act before the Tribunal with a request to state the case and refer the question of law for consideration and decision of this Court. The Tribunal has rejected the request so made by the assessee. That is how the

assessee is before us in this Original Peititon with a request to direct the Tribunal to state the case and refer the question of law raised by it for our consideration and decision.

(5) In our opinion, the question of law which the assessee wants to be referred by the Tribunal is no more res integra, in view of the decision of this Court in in the case of *K.V.Kader Haji (Decd.) (by legal heir)* v. *C.I.T.* (Ker.) [268 ITR 465].

(7) In that view of the matter, it is unnecessary for us to direct the Tribunal to state the case and refer the aforesaid question of law for our consideration and decision. Therefore, the Original Petition requires to be rejected and it is rejected.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-